IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 343 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMULAKH NIHALCHAND THAKKAR

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 343 of 2001
MR DK ACHARYA for Petitioner No. 1
MR BY MANKAD PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 11/09/2001

ORAL JUDGEMENT

#. Being aggrieved by the order of learned City Sessions Judge which is of dated 13.7.2001 below application Ex.64 filed by the present petitioner who is an accused in Sessions Case No.387/2000 whereby the learned city Sessions Judge was pleased to reject the application of the present petitioner to discharge him for the offences under Section 227 of the Criminal Procedure Code for the charges levelled against him under Section 498(A),(B),(C) and 120(B) and 201 of the I.P.C.

#. As per the brief facts of the case, the allegations are levelled that the accused Daoud Ibrahim and Anish Ibrahim who are closely connected by the IAS agency of Pakistan with an intention to disrupt the economy of this country in conspiracy with other accused have counterfeited the Indian currency note of denomination of Rs.500/- and Rs.100/- and the counterfeit currency notes were imported in Indian and were distributed amongst the accused for circulation. A charge-sheet in all 11 accused were submitted before the Court of Sessions, City of Ahmedabad wherein some 10 accused were absconding.

#. Mainly the allegations against the present petitioner being the accused No.11 in the charge sheet is that he obtained counterfeit currency notes of denomination of Rs.1 lac and was part of the conspiracy which was alleged in the charge sheet.

#. The first application came to be filed by the present accused on 22.2.2001 which was rejected by the learned Sessions Judge vide his order dated 3.4.2001. The learned Sessions Judge at that juncture observed that the statement of the independent witness Jagdish Kishanlal Soni in his opinion primafacie established involvement of the accused in the present offence and, therefore, the application came to be rejected. Now, according to allegations against the present accused, out of the alleged counterfeit note of Rs.1 lac some of the counterfeit notes were handed over by the present accused to one Sanjay who is also accused in this case against the debt and the Sanjay in turn deposited some of this currency notes in UCO Bank.

#. Thereafter, it appears that the currency notes which were deposited by the said Sanjay in UCO Bank was examined by the FSL and the FSL found that those notes were not counterfeited notes and hence on that ground a

second application came to be filed by the present accused before the learned City Sessions Judge at Ex.64 on the ground that the FSL report establishes that the currency note that accused Sanjay deposited in the UCO Bank were found to be genuine currency notes by Forensic Science Laboratory and, therefore, there was no case against the accused No.11 present petitioner. The said application Ex.64 came to be rejected by the City Sessions Judge relying on the case of Supreme Court in the matter of Omvati Vs. State of Delhi as reported in (2001) 4 Supreme Court Cases p.333 that while framing of the charge the learned Judge was not required to state reasons and that the application of the accused for discharge was earlier on merits was rejected. Being aggrieved by this order which is dated 13.7.2001 this revision is filed.

#. Learned advocate Mr.D.K.Acharya, for the petitioner and the learned APP Mr.B.Y.Mankad, for the State respondent were heard.

#. Drawing my attention to ingredients of Section 489(A),(B),(C), 120(B) and 201 of the I.P.C. it was vehemently urged that none of the ingredient is primafacie believable in the allegations made against the present accused. There is no evidence at all against the present petitioner that he either counterfeited the currency note or he kept the same in possession or there is no evidence at all that he participated in the conspiracy or that there is no evidence at all that the present accused burnt counterfeit currency note of Rs.30,000/-. My attention was drawn to the panchnama prepared by the police for recovery of currency notes which were deposited in UCO Bank, my attention was also drawn to the report of Forensic Science Laboratory by which it is established that the currency notes which were deposited by the accused Sanjay in the UCO Bank were genuine. It is vehemently urged that the prosecution relies upon a statement of a witness Jagdish Kishanlal Soni -brother of accused Sanjay wherein it is stated that the accused Alimohammad Mohammad Pathan had delivered counterfeit notes to accused Sanjay, as said by this accused witness Jagdish K.Soni, and further that the accused Manubhai @ Alibhai also handed over counterfeit notes of Rs.1 lac to present petitioner, these are the statements attributed to accused Sanjay to have been made before witness Jagdish K.Soni who offered his statement before police in this respect. It was also stated by the witness that the present petitioner stated to him that he had inter mingled counterfeit note of Rs.500/- and Rs.100/- in the currency note which were given to Sanjay

against his debt. In the statement of this witness some conversation recorded on Cellular Phone of this witness which were suspicious according to police, is also narrated.

#. Learned advocate for the petitioner relies on some decisions and those decisions are 1991 Criminal Law Journal in the matter of Mrs. Nina Nargis Devand Vs. Mrs. Farida G. Devchana wherein it is observed that the vague allegations made in the complaint should result in quashing of the criminal proceeding as against the accused. The learned advocate for the petitioner relied on decision of Apex Court in matter of K.Ramakrishna Vs. State of Bihar reported in 2000(8) Supreme Court Cases p.547 wherein it is observed that if upon an admitted facts and documents relied upon by the complainant or prosecution, without shifting of evidence no case is made out, the criminal proceeding instituted against the accused are required to be dropped. Learned advocate Mr.Acharya has also relied upon the decision of Supreme Court in the matter of Mr.Mamuthi Vs. State of Karnataka as reported in AIR 1979 Supreme Court 1705 wherein it is established that there cannot be presumption that the accused knew that notes in possession were counterfeit which is required to be proved by the prosecution. Learned advocate Mr.Acharya relied upon decision of Sohan Chaturvedi Vs. C.R.Shah of this Court as reported in 2000(3) GCD p.76 (Uj.) SC wherein it is observed that when there is no allegations in complaint against the accused the prosecution and trial would be quashed. Learned advocate Mr.Acharya relied upon a decision of Dr.Dattatraya Narayan Samanta Vs. State of Maharastra as reported in 1982 Criminal Law Journal 1025 wherein the High Court of Bombay observed that it cannot be said that the Court cannot apply its judicial mind to the consideration that whether or not there was any ground for presuming in commission of offence and the framing of the charge will have to be considered judicially and the court must not blindly adopt the decision of the prosecution. The learned advocate also cited case of Suresh Budharmal Kalani @ Pappu Kalani Vs. State of Maharastra in which in para 6 and 7 it is observed that, at the stage of framing of the charge the Court is required to confine its attention to only those materials collected during the investigation and not upon further evidence (dehorse those materials) that the prosecution may adduce in the trial. Relying on all these decisions learned advocate Mr.Acharya has urged that there is no iota of evidence against the present petitioner -accused no.11 that he counterfeited note or kept them in possession or he participated in conspiracy. It was

alleged that there is not a single statement denoting that the present petitioner burnt counterfeit currency notes of Rs.30,000/- and was liable under Section 201 of I.P.C. It was urged that only evidence that is available with the prosecution against the present accused is a statement of witness Jagdish K.Soni who states that his brother Sanjay made some statements before him in respect of the accused Sanjay as well as in respect of the present petitioner and that too in respect of receiving counterfeit currency notes from the accused Manubhai Alibhai and the alleged counterfeit currency notes alleged to have been deposited in UCO Bank turn out to be genuine notes. It is urged that the learned Sessions Judge when there was no evidence or if at all there was some materials which was vague in the nature the learned Sessions Judge ought to have discharged the present accused for the allegations levelled against him.

#. While learned APP Mr.B.Y.Mankad urged that at this stage the Court has to see the primafacie evidence available against the accused. Whether that evidence is true or not will be decided at the trial and the statement of witness Jagdish K.Soni is a material available against the present petitioner to frame charge against him and, therefore, according to learned APP there is no error committed by the learned Sessions Judge as to invite interference of this Court.

##. Having considered the rival contentions, true it is that there must be some evidence to connect the accused with the crime alleged against him. It is also true that mere vague allegations which are neither here nor there would not suffice for a citizen to stand a trial but it is equally true that if it is not so, no one can say that he could not stand trial because there is no clear clinching evidence against him to be charged in the allegations levelled against him. In these circumstances, it is a duty of the court to pursue the available materials as a whole and scrutinize the same by applying judicial mind. The court at that juncture has only to find out whether there exist sufficient ground so that a primafacie case is made out to proceed against the accused and it is only when even accepting as it is the evidence which prosecution proposes to adduce, no case is made out against the accused, the Court can discharge him.

##. Principle which surfaces is, if the material collected by the investigation agency creates great doubt and suspicion about the complicity of the accused in the crime, Court ordinarily proceeds to frame charge against

the accused. Truth, veracity and effect of material collected is not required to be judged at this stage. Meticulous test of guilt and innocence is not to be applied though the Court possesses very wider discretion and also determine whether material on record if not rebutted and proved may result reasonably in conviction. The Court, therefore, is required to evaluate the material on record and circumstances with a view to find out, if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the offence.

##. Keeping in mind this principle and reverting back the fact of this case, in my humble opinion there is ample primafacie and sufficient material to proceed against the present petitioner and to frame charge for which the allegations are levelled against him. At this juncture it is necessary to observe that the learned Judge on relying on a decision of Apex Court in Omvati and Anr Vs. State of Delhi came to the conclusion that the learned Judge was not required to give reasons when the learned Judge came to the conclusion that the charge was required to be framed against the accused under Section 227 of the Code. True it is that no detailed reasons are required when charge is framed but when the accused made a request to discharge him and while rejecting or accepting his contention the reasons are required to be recorded by the concerned Court. It must be reflecting that there was an application of judicial mind to the issue. The order refusing discharge should be a speaking order and should at least briefly indicate the evidence constituting primafacie case. However, the learned Sessions Judge has referred that there was sufficient evidence against the accused person to proceed with in view of the statement of the witness Jagdish K.Soni but no reasons were recorded. While examining the issue in revisional jurisdiction, it appears that though the learned Judge was correct in conclusion but he ought to have given reasons for his conclusion.

##. All the ingredients, constituting the offence alleged against the present petitioner is strikingly apparent from the statement of witness Jagdish K.Soni we may not analysis the statement and dissect it but even bare reading of the statement make it very clear that, firstly, the accused Sanjay according to my humble opinion made an extra judicial confession before this witness for the allegations levelled against him which also involves present petitioner. Not only that but present petitioner also made an extra judicial confession before this witness that he obtained counterfeited

currency notes from Sanjay who is an accused and some of such notes were intermingled by him in the notes by which he paid debt to Sanjay. Only this much part of the statement is sufficient to frame charge against the present accused. Whether there is any evidence of burning of the notes or not would not be so material at this juncture to come to a conclusion that there is no primafacie case against the accused to discharge him, it would be a matter of evidence at the trial that how much of the statement which appears to be extra judicial confession in the nature can be proved or how much extra judicial confession made by the co-accused can implicate the other co-accused, in the circumstances of the particular case. The other circumstances narrated by the witness Jagdish Soni clearly indicates that the petitioner and accused Sanjay were involved in the scam of currency notes.

##. In this view of the matter, since there is sufficient evidence in the above nature against the present petitioner no interference is required in the impugned order passed by the learned City Sessions Judge with the observation that the learned City Sessions Judge ought to have recorded reasons for his conclusion. In this view of the matter, this revision fails and is dismissed. Rule is discharged.

(J. R. VORA, J.)

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